

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPEALALTE SIDE CIVIL JURISDICTION**

Arbitration Petition No.41 of 2006

1. Vidyawati Ramkrishna Aranake
aged 72 years, occ nil
2. Ramkrishna Nrayan Aranake
aged 74 years, off nil
both residing at Amey
Shilp Chintamani Society
Vijay Nagar, Wanlesswadi
Tal Miraj, Dist Sangli ..Petitioners
vs

1. Varsha Sanjay Aranake
aged 40 yrs, occ business
2. Sanjay Ramkrishna Aranake
aged 43 yrs, occ business
both residing at Flat No.C-23/
1 MIDC Industrial Area
Miraj, Dist Sangli ..Respondents

Mr S.S. Patwardhan for the petitioners.

Mr U.P. Warunjikar for the respondents.

CORAM: SWATANTER KUMAR,C.J.

Judgment reserved on: 5.10.2007

Judgment delivered on 26.10.2007

JUDGMENT:

This is a petition under section 11 of the Arbitration and Conciliation Act, 1996 praying for appointment of an arbitrator in terms of the arbitration clause in a deed of partnership entered into between the parties as also for fixation of

maintenance of Rs.25,000/- per month during the pendency and disposal of this petition. As far as the relief of maintenance is concerned it is neither maintainable nor could otherwise be granted to the petitioners in this petition, as such the relief is declined. However, it would not affect the right of the petitioners to seek said relief in any other appropriate proceedings in accordance with law.

2. The petitioners and respondents had entered into a partnership and were carrying on business of manufacturing industrial and commercial articles of plastic and nylon under the name and style of Hindustan Nylon. A partnership deed dated 1st January 1996 was executed between the parties. One of the partners Mr. T.K. Mudaliar retired with effect from 28th May 2001 and the parties entered into a fresh partnership deed dated 28th May 2001. Clause 17 of the said deed provided that all disputes between the parties shall be resolved by reference to arbitration. Certain disputes had arisen between the parties and the petitioners, through their counsel, on 21st August 2006 called upon the respondents to refer the disputes for adjudication to the arbitrator.

3. In the notice dated 21st August 2006 the petitioners had taken up a plea that they were called upon and coerced to sign certain documents and the partnership deeds dated 16th May 2002 and deed of retirement dated 18th May 2002 and hence same were not binding on them. However, it was stated that the dispute could be referred to an arbitrator. Paragraph 5 of the said notice reads as under:

“The dispute between you and my clients are governed by an arbitration agreement and are thus arbitrable. My clients, therefore, call upon you to agree for reference of the disputes between my clients on one hand and you both on the other hand, as contained in the memo of application presented to Shri V.S. Warunjikar, Advocate for arbitration on 3.1.2003 as amended from time to time, to a competent person for arbitration in order to arrive at a resolution”.

The partnership deed dated 16th May 2002 contains an arbitration clause while the deed of 18th May 2002, which is alleged to be a retirement deed, does not contain such a clause.

The legality and correctness of the same has been challenged by the petitioners in this petition.

4. In the reply to the main petition the respondents had taken up a plea that the partnership deed dated 16th May 2002 was valid and proper. It was also stated that earlier there was unilateral invocation of the arbitration by the petitioners and the award was made which was challenged by the respondents in Misc. Application No.118 of 2003 before the Adhoc Additional District Judge, Sangli which was allowed and the award dated 30th April 2003 was set aside. This order was challenged in the Arbitration Appeal before this court and the said appeal was permitted to be withdrawn with liberty to the petitioners to take appropriate legal proceedings.

5. From the above facts it is clear that the parties had clearly accepted the arbitration agreement and the award dated 30th April 2003 was set aside on the ground that it was a unilateral reference and not that there was no arbitration agreement between the parties. After having gone through that set of proceedings the petitioners have filed the present petition under section 11 of the Act. It is clear that the respondents

have challenged execution of the document i.e. Partnership Deed containing an arbitration clause. The petitioners themselves have filed this petition. Thus there is no denial even before this court in regard to the existence of the valid and proper arbitration agreement between the parties. The respondents while replying to the notice dated 21st August 2006 and 14th October 2006 again did not deny existence of arbitration agreement and they have specifically stated that the petitioners could not invoke the arbitration agreement if the documents were signed as a result of coercion. The original partnership deed as well as the subsequent deed contain arbitration clause No.17, which states that the parties would resolve their disputes by arbitration and the decision of the arbitrator would be final and binding on the parties. As such there exists an arbitration agreement between the parties and they have raised certain disputes. The merit or otherwise of the disputes raised, including entries alleged to have been made, is a matter which is to be gone into by the learned arbitrator on merits. The scope of the controversy before this court would be very limited one. Once the legality of the arbitration agreement is not seriously disputed before

this court, rest of the matter would squarely fall within the jurisdiction of the arbitrator in terms of clause 17 of the Deed.

In view of the above I hereby appoint Shri M.S. Keny, retired City Civil and Sessions Judge, Bombay as arbitrator, who shall enter upon the reference and complete it expeditiously.

Accordingly this application is allowed, leaving the parties to bear their own costs.

The Registry to communicate this order to the learned arbitrator accordingly.

CHIEF JUSTICE